

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine
the Commission's Post-2005 Energy
Efficiency Policies, Programs, Evaluation,
Measurement and Verification, and
Related Issues.

Rulemaking 06-04-010
(Filed April 13, 2006)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE ALTERNATE PROPOSED DECISION OF
COMMISSIONER PEEVEY GRANTING IN PART AND
DENYING IN PART THE PETITION FOR MODIFICATION**

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I. INTRODUCTION

Pursuant to Rule 14.3 (d) of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits these reply comments on the Alternate Proposed Decision Granting in Part and Part Denying in Part the Petition for Modification (APD). DRA responds below to the Comments of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SCE) and Southern California Gas Company (SoCalGas)¹ on the APD, filed November 24, 2008 (Utilities' APD Comments).

II. DISCUSSION

**A. The Utilities' Erroneously Accuse the Commission of
"Moving the Goal Post."**

The Utilities admonish the Commission to "[s]top [m]oving the [g]oal [p]osts' and [c]onsider NRDC's [p]roposal that [n]et-to-[g]ross [r]emain [c]onstant [t]hrough

¹ DRA's comments refer to PG&E, SCE, SDG&E and SoCalGas as "Utilities."

[p]rogram [e]valuation.”² The contention that the Commission has attempted to “move the goal post,” other than to the extent that the Commission granted in large part the Utilities’ Petition for Modification of D.07-09-043, misconstrues the record in this proceeding and related proceedings before the Commission.³

The Commission established specific energy savings goals for the 2006-08 programs in D.04-0-060. Those goals, which are net of free riders, have not changed.⁴ The Utilities’ achievement of those goals will be based on *ex post* evaluation of the 2006-08 programs after they have been completed. In September 2005, before the program cycle began, Commission clearly stated “that NTGs will in fact be adjusted (trued-up) on an *ex post* basis when we evaluate actual portfolio performance.”⁵ These rules established how performance will ultimately be measured, and they have not been changed since their adoption in 2005.

The Commission did revise its policy regarding the true up of Utility performance prior to the final *ex post* impact evaluation by adopting D.08-01-042, which addressed Utility concerns about certainty and timeliness of interim incentive claims. Among other things, this decision made interim payment non-refundable, except in limited situations, to protect Utilities from “clawback.” However, the Commission also required that interim claims use updated savings assumption data to “mitigate the risk of extremely large swings in earnings (positive or negative) at the final earnings true-up, which serves the interests of both utility shareholders and ratepayers.”⁶ D.08-01-042 established that since the ultimate goal is to reward *ex post* performance, and since interim overpayments are not refundable, the data used for the interim claims should attempt to approximate those which will apply in the final claim.

² Utilities’ APD Comments, p. 4.

³ Utilities’ APD Comments, p.2.

⁴ D.04-09-060, Finding of Fact 15, p.47.

⁵ D.05-09-043, p.97.

⁶ D.08-01-042, p.17.

Thus, it is entirely appropriate that “Energy Division consultants seem to be anticipating future trends,” in order to make the interim incentive payments as consistent as possible with the final *ex post* true-up claim. In addition, it is incorrect that projections or out of state data are used “rather than using recent California studies.”⁷ Instead, any extrapolations are supplemental to the completed impact evaluations of 2004-05 programs in California, which is consistent with the requirements for DEER updates given in D.08-01-042.⁸ The point here is that as long as the ultimate measure of achievement is the final *ex post* impact study, interim evaluations should strive for consistency with the final evaluations, and that is what the Commission’s staff and its consultants are trying to do. This is in line with the D.08-02-042’s premise that interim verification reports should attempt to measure the savings that will apply in the final claim.

In contrast to the Draft Verification Report’s adherence to the principles established in D.08-01-042, the Utilities now advocate for dismantling the *ex post* true up by stating that “the Commission should consider adoption of NRDC’s proposal that the net-to-gross remain constant through program evaluation including the true-up.”⁹ They have indicated a similar desire relative to the 2009-11 program cycle,¹⁰ but until this point have argued that “the final true-up claim continue[s] to be **fully** based on the comprehensive *ex post* measurement and evaluation scheduled for 2010.”¹¹ Supporting NRDC’s proposal would further restrict the true-up process, layered upon the restrictions added by D.08-01-042, and thus seeks to materially change the longstanding rules regarding how Utility performance is measured. This constitutes a true example of

⁷ Utilities’ APD Comments, p.10.

⁸ D.08-01-42 refers at page 16 to a September 2, 2005 ALJ ruling, which states that DEER updates should be “based on the most recently completed evaluation studies,” but does not require the use of studies from California only, or otherwise limit the information that can be considered.

⁹ Utilities’ APD Comments, p.5.

¹⁰ PG&E 2009-11 Energy Efficiency Application (A.08-07-031) dated July 21, 2008, Section 2A.B.1.

¹¹ Utility Reply Comments to Responses to Petition for Modification, September 25, 2008, p.21, emphasis added.

“moving to goal post” and like the other policy rule changes sought by the Utilities, it would move the goal post closer to the Utilities.

B. The Utilities’ Complaint About “Interactive Effects” Is Unsupported By The Draft Verification Report.

The Utilities point to interactive effects as “the most egregious example of the Energy Division’s consultant’s [modeling based] DEER recommendations.”¹² Interactive effects model the relationship between energy efficiency measures and the use of gas and electricity by heating, ventilation, and air conditioning (HVAC) systems, which can have positive or negative impacts.¹³ The Utilities list a litany of complaints with the 2008 DEER update modeling of interactive effects between saving electricity and using gas before finally acknowledging that the Draft Verification Report does not include interactive effects.¹⁴ The Utilities’ complaint appears intended to challenge the integrity of the DEER update process, but in reality, it illustrates that the process allows for reasonable give and take in response to comments. That same process should be allowed to continue during the comment process on the Draft Verification Report.

III. CONCLUSION

DRA has previously shown that the APD contains numerous errors and that it should be rejected on procedural grounds,¹⁵ but errors in the Utilities’ comments highlight that the Alternate fails at a more fundamental level: it supports unsubstantiated claims that Utility performance is worthy of a \$108 million reward. DRA is not suggesting the Utilities have failed as EE Program Managers, or that they receive less than full cost recovery. However, any non-refundable reward must be based on an

¹² Utilities’ APD Comments, p.10.

¹³ Efficient devices produce less heat as a byproduct of producing light, motion, or computing power. In the winter, this heat must be replaced by a furnace if the temperature is to be held constant, which is considered a negative affect. However in the summer, increased efficiency reduces the cooling load, which is a positive impact.

¹⁴ Utilities’ APD Comments, p. 12, citing Draft Verification Report, p. 56.

¹⁵ DRA Comments on the APD dated September 24, 2008.

independent and non-biased finding that their performance is “superior” and the evidence to date does not support such a claim. The Commission set the Utilities’ energy savings goals in D.04-09-060 and before the current program cycle began, D.05-09-043 announced that up-to- date net to gross numbers would be used for measuring program savings. Thus, it is not the Commission that needs to stop “moving the goal post,” it is the Utilities who should focus their efforts on improving program design rather than on changing the rules of the incentive mechanism.

DRA respectfully requests that the Commission reject the APD and instead adopt the Proposed Decision Denying Petition for Modification.

Respectfully submitted,

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December 1, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE ALTERNATE PROPOSED DECISION OF COMMISSIONER PEEVEY GRANTING IN PART AND DENYING IN PART THE PETITION FOR MODIFICATION**” in **R.06-040-10** by using the following service:

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Executed on December 1, 2008 at San Francisco, California.

/s/ NANCY SALYER

Nancy Salyer

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